



IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO.677 OF 2014

(CORAM: CHERERE-J)

IN THE MATTER OF THE ESTATE OF M'IKIARA M'NGUTAR1 (DECEASED)

BETWEEN

GEOFFREY MUGAMBI KIARA.....1ST APPLICANT

JULIUS GATOBU.....2ND APPLICANT

NICHOLAS MURIUNGI KIARA.....3RD APPLICANT

AND

PATRICK MUTHOMI GATOBU.....1ST RESPONDENT

PAUL GITONGA MUGO.....2ND RESPONDENT

AND

IN AN APPLICATION BETWEEN GEOFFREY MUGAMBI KIARA...APPLICANT

AND

NICHOLAS MURIUNGI KIARA.....RESPONDENT

RULING

1. Grant of letters of administration intestate were issued to Geoffrey Mugambi Kiara and Julius Gitobu Ikiara on 21.05.2019.
2. The estate of the deceased was distributed by a ruling dated 15th October, 2020 and a Certificate of Confirmation of Grant was issued on 22nd February, 2021.
3. By chamber summons dated 26th July, 2021 filed on even date, **GEOFFREY MUGAMBI KIARA (1st Administrator)** seeks an order that **NICHOLAS MURIUNGI KIARA (2nd Administrator)** be removed as an administrator for failing to sign the transmission documents thereby frustrating the distribution of the estate.
4. **NICHOLAS MURIUNGI KIARA (2nd Administrator)** by an affidavit sworn jointly with Patrick Muthomi on 21st September, 2021 explains that he had declined to sign the transmission forms because he has filed an Nyeri Court of Appeal Application No. E039 OF 2021 for stay of execution of this court's order on distribution dated 15th November, 2020.

Analysis and Determination

5. It is trite that filing of an appeal does not act as automatic stay. Whereas there is no evidence that the Respondent has filed an appeal, the notice annexed to the replying affidavit relates to filing of an application for stay of execution of this court's order.

6. This court by an order dated 15th April, 2021 dismissed an application for stay of execution pending appeal but issued orders to the effect that the beneficiaries shall not sell or dispose off their respective portions subdivided from **Land Parcel No. NKUENE/URUKU/52** pending the hearing and determination of the intended appeal.

7. This court has already addressed the issue of stay pending the intended appeal and I wish not belabour the point.

8. Section 83 of the Law of Succession Act which deals with the Duties of personal representatives provides that:

(g)within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration

9. The fact of Nicholas Muriungi Kiara, 2nd Administrator's failure to sign the transmission forms no doubt stands in the way of completing the administration of the estate which ought to have been completed by now.

7. In **B vs. Attorney General [2004] 1 KLR 431**, Ojwang, J (as he then was) appreciated the duty to obey court orders and stated that:

“The Court does not, and ought not to be seen to, make Orders in vain; otherwise the Court would be exposed to ridicule, and no agency of the Constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people.”

8. In this case there has been no reasonable explanation why the 2nd Administrator has failed and/or refused to cooperate to enable a speedy distribution of deceased's estate.

9. From the foregoing, I am persuaded that the summons dated 24th May, 2021 has merit and it is allowed in the following terms:

1. NICHOLAS MURIUNGI KIARA (2nd Administrator) is removed as an administrator of deceased's estate

2. GEOFFREY MUGAMBI KIARA (1st Administrator) shall be the sole administrator of the estate and shall proceed to distribute the estate as ordered by this court

3. NICHOLAS MURIUNGI KIARA shall pay the costs of this application

DATED AT MERU THIS 18TH DAY OF NOVEMBER, 2021

WAMAE. T.W. CHERERE

JUDGE

Court Assistant - Morris Kinoti

For the Applicant - N/Afor M/s. Gichunge Muthuri & Co. Advocates

For Respondent - Mr. Munene for Munene Kirimi & Co. Advocates